

Department of the Interior
1849 C Street, N.W.
Washington DC 20240

22 September 2013

RE: Revisions to Federal Acknowledgement Regulations

Please find attached the petition and comments as submitted by the individual citizens, descendants and Tribal citizens whose signatures are appended.

Respectfully submitted,

Department of the Interior
1849 C Street, N.W.
Washington DC 20240

RE: Revisions to Federal Acknowledgement Regulations

The Honorable Sally Jewel:

After having reviewed the proposed revisions to 25 CFR 83, we would like the Bureau to consider the suggested revisions listed as the ones that would best serve American Indians. We would like to thank you for your efforts in addressing these real and pressing problems confronting Indian peoples. We particularly applaud your decision to recognize the importance of State recognition as a Tribe. Additionally, we the undersigned make the following recommendations.

1. §83.1 Definitions. For clarity and to reflect the purpose of the reference to 1934, we recommend in the definition of “continuously or continuous,” after the word “from”, insert “date of the enactment of the Indian Reorganization Act of 1934”. That previous acknowledgement by a State or Federal institution as a Tribal entity should be acceptable substantive proof to the department that a Tribal entity exists for purposes of Federal acknowledgement. Such instances should include State recognition through a process that substantially mimics the federal process, land held in trust for Tribes by states, or recognition by an arm of the Federal government that a Tribe exists or is eligible for benefits that they may be eligible for due to their status as Indians. Such instances should include but not be limited to the Bureaus of Ethnology or the Smithsonian, Indian Health Service, Bureau of Indian Education or similar governmental entities or government sponsored institutions.
2. Recommend that the regulations establish a presumption that, if the Tribe existed in 1934, that the Tribe is still in existence presently. History reflects that the government made it difficult for tribes to exist in from the early 19th century through 1934 and a renewed assault on Tribal sovereignty occurred in the 1950’s through the middle 1970’s. It may be presumed therefore that if Tribal entities still existed in 1975 through 1978, a time when there was no discernable benefit to maintaining Tribal relations, it should be assumed that the Tribe did still in fact exist and the burden to prove non-existence should be on the bureau with benefit of the doubt accruing to the petitioner.
3. We recommend deletion of the defined term “historically, historical or history” as the term, as presently defined, purports to require documentation from first sustained contact with non-Indians. This term places an unnecessary burden on tribes and is unnecessary. We recommend deletion of the term “Office of Hearings and Appeals or OHA”. We recommend against assigning decision-making to OHA. The AS-IA may fully reconsider and revisit a decision not to recognize a tribe. The wisdom of a policy must be reviewed in the context of the demands it places on tribes that seek recognition and should not be allowed to stop tribal nations from benefiting from a

government-to-government relationship with the federal government. Therefore, we recommend that you clarify that the AS-IA may continue to reverse policy decisions and remedy clear mistakes of law and facts if required in the interest of justice for tribes.

4. Section 83.4 and other similar sections suggest that tribes that have already submitted documentation to the Department must resubmit that documentation. This is a major burden on tribes, especially tribes who have already submitted a fully documented petition and have received an adverse decision. Under the Paperwork Reduction Act, the Department is obliged to access its own records and not demand that tribes redevelop those extensive files. We estimate that it would take thousands of hours and hundreds of thousands of dollars to once again research and resubmit a fully documented petition. We recommend that the Department make each tribe's files easily available for each tribe and to devise a methodology for allowing the tribe to rely on existing Department files when appropriate.
5. Section 83.5 and similar sections appear to authorize the Office of Federal Acknowledgment (OFA) to make substantive recognition decisions. While we agree that there can be appropriate delegations to the OFA, the OFA should clearly serve as staff to the Assistant Secretary – Indian Affairs and should not usurp that authority.
6. We strongly support the concept of an expedited favorable decision process referenced in §§83.6(c) and 83.10. Section 83.6 purports to limit the number of pages of the documented petition. We agree that the petition as well as other documents submitted by other parties can be limited. For the petition, we recommend that the petition be limited to 50 pages, excluding exhibits.
7. With respect to §83.6(d), we agree that the evidence should be viewed in the light most favorable to petitioner. This standard is consistent with the long held legal standard that laws should be viewed in the light most favorable to the Indian tribe. We recommend that in this section, after a tribe has provided the basic information required for a petition, the burden of proof should shift to the Department and that the AS-IA must find only substantial evidence supports the validity of the facts claimed when viewed in the light most favorable to the petitioner. We agree that subsection §83.7(a) should be deleted.
8. Recommend that subsection (b) should require a “substantial” portion of the petitioning group to comprise a distinct community.
9. Section 83.7(b)(2) should require a substantial percent of marriages, members, etc. rather than a fixed percent.
10. Subsection 83.7(b) (1) and (2) should continue to include the terms “organization, or religious beliefs and practices” and add “systems or ceremonies”.

11. Section 83.7(c) should include tribal leader interactions with other governments as evidence of political influence over the members. Tribal members allow their leaders to represent them before other governments to resolve issues with those governments. When a leader is sent by the membership to work with another tribal, state or federal government to represent the tribal government or to represent individual member's interests, such interactions evidence the person's influence over the membership. So to, the other government's reaction and dealings with the tribal leader evidences its finding that the leader can represent the tribe's membership. It is completely disingenuous to suggest that governments accept any Native American who appears before them as representative of the tribal government. Any government at least makes informal inquiries into whether that person can actually represent the tribe or its individual members. The federal government is not that cavalier in working with purported tribal leaders, neither are states or other tribes
12. The term historical should be deleted from subsection 83.7(e) and the phrase "from 1934" should be added at the end of the first sentence. We are concerned that the use of historical Indian tribe in (e) requires the same past document- intensive evidentiary requirement and defeats the other revisions which only relate back to 1934 or the proposed 1975 date. The relevant times for identifying tribes and their membership are the 1900's or 1930's, not since sustained contact.
13. We also recommend that the petitioner should only be required to identify a substantial number of petitioner's members as being descendants from a 1934 Indian tribe. We recommend this as there are many instances of individuals and families either resisting enrollment or being denied enrollment by government officials (Mississippi Choctaw, Keetowah Cherokees, etc.). In these cases personal and family identification in the community by Tribal members should take precedence. This precedent exists in previous cases during the Dawes enrollment where testimony was given as to the status of applicants for enrollment by Tribal authorities and recognized Tribal citizens.
14. Section 83.8(b) combined with 83.10(b) authorizes the OFA to decide whether a tribe was previously federally acknowledged. We believe that all decisions should remain vested with the AS-IA who is charged with exercising the trust responsibility for tribes. We do agree, however, that OFA should be delegated the authority to provide technical assistance, publish notices, and take other such administrative actions that do not require AS-IA review.
15. We recommend that §83(c) (1) should be revised to add, at the end of (1), the phrase "whether or not such treaty was ratified." Subsection (2) should be revised to read as follows: "Evidence that the group has been denominated a tribe by act of Congress, actions by the Executive branch, or a Federal court decision."
16. We agree that a documented petition, under §83.9, should be the basis for beginning review of a tribe's petition and that the OFA should be delegated the authority to take the administrative actions required by §83.9.

